

# **Reply of the European Commission to the European Ombudsman’s letter concerning its own initiative inquiry OI/4/2023/MIK, related to how the European Parliament, the Council of the European Union and the European Commission handle requests for public access to legislative documents**

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## **I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY**

On 2 October 2023, the European Commission received a letter from the European Ombudsman concerning its own initiative inquiry OI/4/2023/MIK, related to how the European Parliament, the Council of the European Union and the European Commission handle requests for public access to legislative documents.

In this letter, the Ombudsman made a request to the Commission for statistical information concerning the processing of access to documents requests on three specific legislative files and asked to receive this information by 30 November 2023.

On 29 November 2023, the Commission explained that the preliminary results obtained to that date required a detailed analysis of each individual file to be able to provide the Ombudsman with the specific information requested. Due to the difficulty with extraction of relevant data and its analysis, the Commission requested the extension of the deadline until 15 January 2024.

## **II. THE EUROPEAN OMBUDSMAN’S OWN INITIATIVE INQUIRY**

By its letter of 2 October 2023, the Ombudsman requested:

‘[...] provide statistical information concerning all *initial* applications for public access to any documents drawn up or received in the course of the procedures within your institution (including to correspondence, minutes of meetings, impact assessment documents, working documents, amendments, reports, four-column documents, legal opinions and any other documents) leading to the adoption of the following acts:

- The Digital Markets Act<sup>1</sup>
- The Revision of the Emissions Trading Scheme Directive<sup>2</sup>
- The Minimum Wage Directive<sup>3</sup>

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<sup>1</sup> Regulation 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector, OJ L 265/1.

<sup>2</sup> Directive 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, OJ L 130/134.

<sup>3</sup> Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, OJ L 275/33.

The information should include:

- the number of initial applications for public access to legislative documents concerning the above files;
- the number of initial decisions and in how many cases the Commission (a) refused access, (b) granted partial access, (c) granted full access; as well as
- the average and median time taken to process the applications’.

The Ombudsman specified that the applications for public access that concerned exclusively documents that were publicly available already should be excluded from the statistics.

The Ombudsman requested lists of all confirmatory applications for public access to any documents drawn up or received in the course of the procedures within the Commission leading to the adoption of the three abovementioned legislative acts. The information should contain the type of the requested documents (such as ‘correspondence between...’, ‘minutes’, ‘impact assessment report’, ‘legal opinion’), the dates of the confirmatory applications and confirmatory decisions, and information about the outcome of the decision (non-disclosure confirmed, partial disclosure confirmed, wider access granted, full access granted).

### **III. THE REPLY TO THE EUROPEAN OMBUDSMAN**

The Secretariat-General of the Commission launched a thorough search and gathered the requested data available in its IT tool for handling the applications for access to documents – EASE.

Following this research, the Commission has identified 156 initial requests related to documents of possible relevance for the Ombudsman inquiry. However, the selection of the applications that fully correspond to the subject of this inquiry would require a massive time investment as it involves a detailed, individual analysis of each of these requests.

Moreover, further to the analysis of raw data obtained, the Commission is unable to provide in a reasonable time the reply as to the type of disclosure as well as an average and median time of handling of initial replies. The statistical feature of the IT system Electronic Access to Commission Documents (EASE) is currently under development and the Commission will be able to extract and complete this data at a later stage.

Concerning the confirmatory applications, the Commission identified nine confirmatory applications including pending ones. The Annex 1 lists those applications including the data on the documents requested, type of disclosure and time required to handle them.

The Secretariat-General is ready to engage further with the Ombudsman services should they have additional questions.